

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1668-PST-E TCEQ ID: RN101835726 CASE NO.: 31606
RESPONDENT NAME: JAVIER B. ARMENDARIZ

Page 1 of 2

ORDER TYPE:

<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATIONS OCCURRED: 1112 South Dixie Boulevard, Odessa, Ector County

TYPE OF OPERATION: Abandoned mechanic shop/car wash facility

SMALL BUSINESS: ☒ Yes. ☐ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility. The Respondent owes \$724.83 in past-due penalties (plus \$3,800 in previously deferred penalties).

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 20, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Phillip M. Goodwin, P.G., Litigation Division, MC 175, (512) 239-0675
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Steven Lopez, Waste Enforcement Section, MC 128, (512) 239-1896

TCEQ Regional Contact: Mr. Michael Edmiston, P.E., Midland Regional Office, MC R-7, (432) 570-1359

Respondent: Mr. Javier B. Armendariz, 1111 Rose Avenue, Odessa, Texas 79761

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: August 29, 2008</p> <p>Date of NOE Relating to this Case: September 25, 2008</p> <p>Background Facts: The EDPRP was filed December 12, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on January 15, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: There are no pumps or dispensers connected to the USTs at the Facility, and the Respondent does not have a delivery certificate.</p> <p>PST:</p> <p>1. Failed to provide proper corrosion protection for the underground storage tank ("UST") system or permanently remove the UST system from service [30 TEX. ADMIN. CODE § 334.49(a); TEX. WATER CODE § 26.3475(d); and TCEQ Agreed Order, Docket No. 2006-1902-PST-E, Ordering Provisions No. 2.a.ii. or 2.a.iii.].</p> <p>2. Failed to timely and satisfactorily comply with the administrative penalty payment requirements and late fees associated with the penalty [TCEQ Agreed Order, Docket No. 2006-1902-PST-E, Ordering Provisions No. 1].</p>	<p>Total Assessed: \$15,625</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$15,625</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Immediately:</p> <p>a. Submit payment for remaining penalties assessed in TCEQ Agreed Order, Docket No. 2006-1902-PST-E, including any associated penalties and interest;</p> <p>b. Submit payment of the deferred portion of Agreed Order, 2006-1902-PST-E, in the amount of Three Thousand Eight Hundred Dollars (\$3,800.00); and</p> <p>2. Within 30 days, either:</p> <p>a. Install and implement a corrosion protection system for all USTs; or</p> <p>b. Permanently remove the UST system from service.</p> <p>3. Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	29-Sep-2008		
	PCW	13-Mar-2009	Screening	3-Oct-2008
			EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Javier B. Armendariz		
Reg. Ent. Ref. No.	RN101835726		
Facility/Site Region	7-Midland	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	31606	No. of Violations	2
Docket No.	2008-1668-PST-E	Order Type	Findings
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steven Lopez
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$12,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **25.0%** Enhancement **Subtotals 2, 3, & 7** **\$3,125**

Notes Enhancement for one 1660 Agreed Order and one NOV for same or similar violations.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$977**
Approx. Cost of Compliance **\$8,000**

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$15,625**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$15,625**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$15,625**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$15,625**

Screening Date 3-Oct-2008	Docket No. 2008-1668-PST-E	PCW
Respondent Javier B. Armendariz	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 31606	<i>PCW Revision June 12, 2008</i>	
Reg. Ent. Reference No. RN101835726		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Steven Lopez		

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)		Enter Number Here	Adjust.
Component	Number of...		
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%
Adjustment Percentage (Subtotal 2)			25%
>> Repeat Violator (Subtotal 3)			
No			Adjustment Percentage (Subtotal 3) 0%
>> Compliance History Person Classification (Subtotal 7)			
Average Performer			Adjustment Percentage (Subtotal 7) 0%
>> Compliance History Summary			
Compliance History Notes	Enhancement for one 1660 Agreed Order and one NOV for same or similar violations.		
Total Adjustment Percentage (Subtotals 2, 3, & 7)			25%

Screening Date 3-Oct-2008	Docket No. 2008-1668-PST-E	PCW
Respondent Javier B. Armendariz	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 31606	<i>PCW Revision June 12, 2008</i>	
Reg. Ent. Reference No. RN101835726		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Steven Lopez		
Violation Number 1		
Rule Cite(s)	30 Tex. Admin Code § 334.49(a), Tex. Water Code § 26.3475(d), and TCEQ Agreed Order, Docket No. 2006-1902-PST-E (effective September 21, 2007), Ordering Provisions No. 2.a.ii. or 2.a.iii.	
Violation Description	Failed to provide proper corrosion protection for the UST system or permanently remove all USTs from service.	
Base Penalty		\$10,000
>> Environmental, Property and Human Health Matrix		
OR	Release	Harm
	Major	Moderate
	Minor	
Actual		
Potential	x	
Percent		25%
>> Programmatic Matrix		
	Falsification	Major
	Moderate	Minor
Percent	0%	
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.	
Adjustment		\$7,500
		\$2,500
Violation Events		
Number of Violation Events		5
		378
Number of violation days		
mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	
Violation Base Penalty		\$12,500
Five quarterly events are recommended from the order effective date of September 21, 2007 to the screening date of October 3, 2008.		
Good Faith Efforts to Comply		0.0% Reduction
		\$0
Before NOV		NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	
Violation Subtotal		\$12,500
Economic Benefit (EB) for this violation		Statutory Limit Test
Estimated EB Amount	\$977	Violation Final Penalty Total
		\$15,625
This violation Final Assessed Penalty (adjusted for limits)		\$15,625

Economic Benefit Worksheet

Respondent Javier B. Armendariz
Case ID No. 31606
Reg. Ent. Reference No. RN101835726
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	\$8,000	5-Oct-2007	3-Jul-2009	1.75	\$47	\$931	\$977
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0
Notes for DELAYED costs	Estimated cost to provide corrosion protection for the UST system. The Date Required is 30 day after the effective date of the Agreed Order. The Final Date is estimated date of compliance.						
Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Notes for AVOIDED costs							
Approx. Cost of Compliance	\$8,000			TOTAL		\$977	

Screening Date 3-Oct-2008	Docket No. 2008-1668-PST-E	PCW						
Respondent Javier B. Armendariz	<small>Policy Revision 2 (September 2002)</small>							
Case ID No. 31606	<small>PCW Revision June 12, 2008</small>							
Reg. Ent. Reference No. RN101835726								
Media [Statute] Petroleum Storage Tank								
Enf. Coordinator Steven Lopez								
Violation Number 2								
Rule Cite(s)	TCEQ Agreed Order, Docket No. 2006-1902-PST-E (effective September 21, 2007), Ordering Provision No. 1							
Violation Description	Failed to timely and satisfactorily comply with the administrative penalty payment requirements and late fees associated with the penalty. Specifically, the Respondent made five One Hundred Dollar (\$100) penalty payments of the required 12 payments.							
Base Penalty		\$10,000						
>> Environmental, Property and Human Health Matrix								
OR	Release	Harm						
		Major Moderate Minor						
	Actual Potential	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 33%; height: 20px;"></td><td style="width: 33%; height: 20px;"></td><td style="width: 33%; height: 20px;"></td></tr> <tr><td style="width: 33%; height: 20px;"></td><td style="width: 33%; height: 20px;"></td><td style="width: 33%; height: 20px;"></td></tr> </table>						
>> Programmatic Matrix								
	Falsification	Major Moderate Minor						
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 33%; height: 20px;"></td><td style="width: 33%; height: 20px;"></td><td style="width: 33%; height: 20px;"></td></tr> </table>				Percent 0%			
Matrix Notes								
Adjustment		\$10,000						
		\$0						
Violation Events								
Number of Violation Events		Number of violation days						
<small>mark only one with an x</small>	daily	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%; height: 20px;"></td><td style="width: 50%; height: 20px;"></td></tr> </table>			Violation Base Penalty \$0			
	monthly	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%; height: 20px;"></td><td style="width: 50%; height: 20px;"></td></tr> </table>						
	quarterly	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%; height: 20px;"></td><td style="width: 50%; height: 20px;"></td></tr> </table>						
semiannual	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%; height: 20px;"></td><td style="width: 50%; height: 20px;"></td></tr> </table>							
annual	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%; height: 20px;"></td><td style="width: 50%; height: 20px;"></td></tr> </table>							
single event	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%; height: 20px;"></td><td style="width: 50%; height: 20px;"></td></tr> </table>							
No penalty is recommended because penalty and interest will be assessed at the next billing.								
Good Faith Efforts to Comply		0.0% Reduction \$0						
	<small>Before NOV NOV to EDPRP/Settlement Offer</small>							
Extraordinary	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%; height: 20px;"></td><td style="width: 50%; height: 20px;"></td></tr> </table>							
Ordinary	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 50%; height: 20px;"></td><td style="width: 50%; height: 20px;"></td></tr> </table>							
N/A	(mark with x)							
Notes								
Violation Subtotal		\$0						
Economic Benefit (EB) for this violation		Statutory Limit Test						
Estimated EB Amount	\$0	Violation Final Penalty Total \$0						
This violation Final Assessed Penalty (adjusted for limits)		\$0						

Economic Benefit Worksheet**Respondent** Javier B. Armendariz**Case ID No.** 31606**Reg. Ent. Reference No.** RN101835726**Media** Petroleum Storage Tank**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

NA

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

NA

Approx. Cost of Compliance **TOTAL**

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600999023	ARMENDARIZ, JAVIER B	Classification: AVERAGE	Rating: 32.00
Regulated Entity:	RN101835726	JAVIER ARMENDARIZ	Classification: AVERAGE	Site Rating: 32.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	43280	
Location:	1112 S DIXIE BLVD, ODESSA, TX, 79761	Rating Date: 9/1/2008	Repeat Violator: NO	
TCEQ Region:	REGION 07 - MIDLAND			
Date Compliance History Prepared:	October 21, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 21, 2003 to October 21, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Steven Lopez Phone: 512-239-1896

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.

Effective Date: 09/21/2007

ADMINORDER 2006-1902-PST-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)(1)

Description: Failed to provide proper corrosion protection for the UST system.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 10/27/2006 (512932)
- 2 06/25/2008 (594800)
- 3 09/25/2008 (701510)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/28/2008 (594800)

Self Report? NO

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

Self Report? NO

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(d)
30 TAC Chapter 334, SubChapter C 334.49(a)(1)

Description: Failed to provide proper corrosion protection for the UST system.
Self Report? NO Classification: Major
Rqmt Prov: ORDER 1., 2.a.i.-2.a.iii, 2.b.
Description: The regulated entity was found to be in violation of Agreed Order Docket No. 2006-1902-PST-E; specifically, IV. ORDERING PROVISIONS 2.a.i. (Failure to install and implement a release detection system for all USTs), 2.a.ii. (Failure to install and implement a corrosion protection system for all USTs), and 2.a.iii. (Failure to permanently remove all USTs from service).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JAVIER B. ARMENDARIZ,
RN101835726

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER DOCKET NO. 2008-1668-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7 and 26, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Javier B. Armendariz ("Mr. Armendariz").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Armendariz owns an abandoned mechanic shop/car wash facility located at 1112 South Dixie Boulevard, in Odessa, Ector County, Texas (the "Facility").
2. Mr. Armendariz's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Armendariz's USTs contain a regulated substance as defined in the rules of the Commission
3. During an inspection on August 29, 2008, a TCEQ Midland Regional Office investigator documented that Mr. Armendariz:
 - a. Failed to provide proper corrosion protection for the UST system or permanently remove all USTs from service.
 - b. Failed to timely and satisfactorily comply with the administrative penalty payment requirements and late fees associated with the penalty. Specifically, the Respondent

made only five one hundred dollar (\$100.00) penalty payments of the required 12 monthly payments of one hundred dollars (\$100.00) each.

4. Mr. Armendariz received notice of the violations on or about September 30, 2008.
5. The Executive Director recognizes that Mr. Armendariz:
 - a. Does not currently possess a current, valid UST delivery certificate.
 - b. Does not currently have pumps or dispensers at the Facility.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Javier Armendariz" (the "EDPRP") in the TCEQ Chief Clerk's office on December 12, 2008.
7. By letter dated December 12, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Armendariz with notice of the EDPRP. According to the return receipt "green card," the Respondent received notice of the EDPRP on January 15, 2009, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. Armendariz received notice of the EDPRP, provided by the Executive Director. Mr. Armendariz failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Armendariz is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7 and 26, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Armendariz failed to provide proper corrosion protection for the UST system or permanently remove all USTs from service, in violation of 30 TEX. ADMIN. CODE § 334.49(a); TEX. WATER CODE § 26.3475(d); and TCEQ Agreed Order, Docket No. 2006-1902-PST-E, Ordering Provisions No. 2.a.ii or 2.a.iii.
3. As evidenced by Finding of Fact No. 3.b., Mr. Armendariz failed to timely and satisfactorily comply with the administrative penalty payment requirements and late fees associated with

the penalty, in violation of TCEQ Agreed Order, Docket No. 2006-1902-PST-E, Ordering Provisions No. 1.

4. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Armendariz with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 8, Mr. Armendariz has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Armendariz and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Armendariz for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of fifteen thousand six hundred twenty-five dollars (\$15,625.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Armendariz is assessed an administrative penalty in the amount of fifteen thousand six hundred twenty-five dollars (\$15,625.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Armendariz's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order

shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Javier B. Armendariz; Docket No. 2008-1668-PST-E." to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Armendariz shall undertake the following technical requirements:

a. Immediately upon the effective date of this Order, Mr. Armendariz shall.

- i. Submit payment for remaining penalties assessed in TCEQ Agreed Order, Docket No. 2006-1902-PST-E, including any associated late fees and interest and with the notation, "Javier B. Armendariz, TCEQ Docket No. 2006-1902-PST-E", to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

- ii. Submit payment of the deferred portion of Agreed Order, 2006-1902-PST-E, in the amount of Three Thousand Eight Hundred Dollars (\$3,800), with the notation "Javier B. Armendariz, Docket No. 2006-1902-PST-E, Deferred Administrative Penalty Payment" to the address listed in Paragraph 2.a.i.; and

b. Within 30 days after the effective date of this Order, Mr. Armendariz shall either:

- i. Install and implement a corrosion protection system for all USTs at the Facility, in accordance 30 TEX. ADMIN. CODE § 334.49; or
- ii. Permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.

c. Within 45 days after the effective date of this Order, Mr. Armendariz shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos.

2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Mr. Armendariz shall submit the written certification and copies of documentation to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Michael Edmiston, Waste Section Manager
Texas Commission on Environmental Quality
Midland Regional Office
3300 North A Street, Building 4, Suite 107
Midland, Texas 79705-5404

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Armendariz. Mr. Armendariz is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Armendariz fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Armendariz's failure to comply is not a violation of this Order. Mr. Armendariz shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Armendariz shall notify the Executive

Director within seven days after Mr. Armendariz E becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Armendariz shall be made in writing to the Executive Director. Extensions are not effective until Mr. Armendariz receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Armendariz if the Executive Director determines that Mr. Armendariz has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Javier B. Armendariz
Docket No. 2008-1668-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN


STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Phillip M. Goodwin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Javier B. Armendariz" (the "EDPRP") was filed with the Office of the Chief Clerk on December 12, 2008.

I sent the EDPRP to Mr. Armendariz at his last known address on December 12, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on January 15, 2009, as evidenced by the signature on the card.

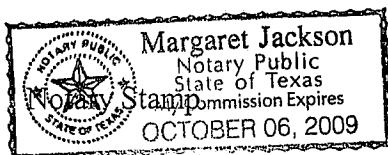
More than 20 days have elapsed since Mr. Armendariz received notice of the EDPRP. Mr. Armendariz failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference".

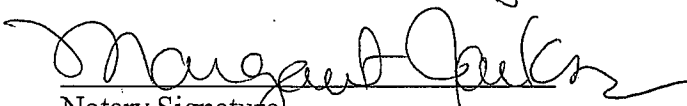


Phillip M. Goodwin
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 12 day of February A.D., 2009.





Notary Signature